

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED SENATE BILL NO. 2396**

Introduced by

Senators Goetz, Grindberg, Wogsland

Representatives Dorso, Keiser, Poolman

- 1 A BILL for an Act to provide for establishment and operation of the North Dakota low-risk
2 incentive fund; to provide a penalty; and to provide an effective date.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act:

- 5 1. "Fund" means the North Dakota low-risk incentive fund.
6 2. "Governing board" means the board of directors of the corporation or board of
7 governors of the limited liability company established under section 2 of this Act.
8 3. "Insurer" means any foreign or domestic corporation, association, benefit society,
9 exchange, partnership, limited liability company, or individual engaged as principal
10 in the business of insurance in this state.
11 4. "Primary sector business" means an individual, corporation, limited liability
12 company, partnership, or association that through the employment of knowledge or
13 labor adds value to a product, process, or service which results in the creation of
14 new wealth. Qualification as a primary sector business under this subsection must
15 be determined by the department of economic development and finance.

16 **SECTION 2. Establishment - Organization.** Any insurer or group of insurers may
17 establish a corporation or limited liability company to own and operate the North Dakota
18 low-risk incentive fund. Except as provided in this Act, all authority regarding the articles of
19 incorporation or articles of organization is the province of the governing board, which must
20 include a representative of the Bank of North Dakota and the director of the department of
21 economic development and finance. The Bank of North Dakota shall administer the fund;
22 however, the governing board is responsible for adopting fund policies and procedures. The
23 governing board may not distribute more than seventy-five percent of the net profit of the fund
24 in any of the first five years of operation.

1 **SECTION 3. North Dakota low-risk incentive fund use.** The fund may be used only
2 for making loans to low-risk businesses for primary sector business projects in this state and no
3 loan may be approved or made by the fund without a ten percent participation in the aggregate
4 amount of the loan by the Bank of North Dakota. The participation of the Bank of North Dakota
5 in a loan may not exceed ten percent of the aggregate amount of the loan. A loan from the
6 fund may not be made to an insurer. The governing board shall establish the rate of interest
7 and terms of repayment for a loan from the fund. Fifty percent of the amount loaned from the
8 fund during the first year of a biennium must be reserved solely for businesses in rural areas.
9 The remainder loaned from the fund may be used in urban or rural areas. For purposes of this
10 section, "rural areas" means the area of the state not including territory within the corporate
11 limits of a city with a population of twenty thousand or more.

12 **SECTION 4. Loan administration.** An application for a loan from the fund must
13 contain the information prescribed by the governing board. Except as provided in this section,
14 information contained in applications for loans from the fund is confidential. The Bank of North
15 Dakota shall review each loan application, report to the governing board whether the applicant
16 represents a primary sector business project, and make a recommendation to the governing
17 board to either approve or disapprove the loan application. The Bank of North Dakota shall
18 administer all loans issued by the fund and shall receive from the fund a service fee of
19 twenty-five basis points on all loans in place. The commissioner of insurance may examine the
20 fund and activities of insurers in connection with the fund to assure compliance with title 26.1.
21 The fund shall pay for the costs of an examination and no credit may be allowed any insurer for
22 payment of examination costs as otherwise provided under section 26.1-03-17.

23 **SECTION 5. Audited financial statement - Report of fund operations.** The
24 governing board shall contract annually with a certified public accountant for performance of an
25 audit and preparation of audited financial statements of the fund prepared in accordance with
26 generally accepted accounting principles and a report containing an analysis of the impact of
27 the fund on the state's economy, business and employment activity generated by loans from
28 the fund, and the effects of that activity on state and local tax revenues. The governing board
29 shall provide the financial statements and report to the governor, the commissioner of
30 insurance, and the legislative council and make copies available to the public. The cost of the
31 audit and preparation of financial statements and report must be paid from the fund.

1 **SECTION 6. Tax credit - Penalty.** If the requirements of this Act are met, an insurer is
2 entitled to a credit against taxes due under section 26.1-03-17 as determined under this
3 section.

4 1. An insurer making or participating in a loan under this Act is entitled to a premium
5 tax credit calculated for each calendar year the loan is in place. The amount of the
6 credit is the difference between:

7 a. The participating insurer's share of the interest earned on the loan during the
8 calendar year; and

9 b. The participating insurer's share of an amount of interest that would have
10 been earned during the same period by applying an interest rate, calculated
11 by adding three hundred basis points to a comparable treasury security rate
12 at the date of the issuance of the loan.

13 2. The maximum credit allowed an insurer for any calendar year is the amount of
14 interest that would have been earned during the period by applying an interest rate
15 of three hundred basis points. A credit may not be allowed if the interest earned
16 exceeds the interest that would have been earned by applying the calculation in
17 subdivision b of subsection 1.

18 3. The credit may not exceed the total amount of the insurer's tax liability under
19 subsection 1 of section 26.1-03-17 and no unused credit may be carried forward.

20 4. Credits under this section for all insurers may not exceed one million dollars in a
21 calendar year.

22 **SECTION 7. Assets of insurers.** The amount of a loan made by an insurer or the
23 amount of an insurer's participation in a loan made under this Act may not be considered or
24 reported on the insurer's annual statement as an admitted asset except to the extent provided
25 under section 2 of Senate Bill No. 2132, as approved by the fifty-fifth legislative assembly.

26 **SECTION 8. Assets of insurers.** The aggregate amount of all loans made by an
27 insurer under this Act or the aggregate amount of an insurer's participation in loans made under
28 this Act may not at any time exceed five percent of the company's admitted assets or the
29 amount equal to the company's capital and surplus in excess of the minimum capital and
30 surplus required by law, whichever is less.

1 **SECTION 9. EFFECTIVE DATE.** Section 7 of this Act is effective July 1, 1997, if
2 Senate Bill No. 2132 is approved by the fifty-fifth legislative assembly and becomes law, and is
3 otherwise ineffective. Section 8 of this Act is effective July 1, 1997, if Senate Bill No. 2132 is
4 not approved by the fifty-fifth legislative assembly or does not become law, and is otherwise
5 ineffective.